

1 JOSEPH H. HARRINGTON
2 Acting United States Attorney
3 Tyler H.L. Tornabene
4 Assistant United States Attorney
5 Post Office Box 1494
6 Spokane, WA 99210-1494
7 Telephone: (509) 353-2767

8
9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 In Re the Matter of:

13 R.J.M.'s Petition to Stay Civil
14 Investigative Demand No. 17-10
15 Directed to R.J.M., Under 31 U.S.C.
16 §§ 3729-3733

17 United States' Response to
18 Petitioner's Motion to Seal

19 No. 4:17-mc-1-MKD

20
21 **RESPONSE TO PETITIONER'S MOTION TO SEAL**

22 The United States files the following response to Petitioner's Motion to Seal
23 Matter (ECF No. 2) and to the Court's June 19, 2017 Order, which denied the motion
24 in part, made the case caption available on the public docket, and ordered the United
25 States "to address whether any specific pleading/filing . . . should be filed under seal."
26 (ECF No. 7.) As explained further below, the United States submits that Petitioner's
27 Motion to Stay Deposition and Reply, with their respective attachments (ECF Nos. 1,
28 6); the United States' Response and its attachments (ECF No. 5); the transcript of the
telephonic hearing; and the court's June 22, 2017 Order on the Petition to Stay
Deposition (ECF No. 8) should all remain under seal at this time.¹

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

¹ The Motion to Seal Matter (ECF No. 2), the Court's June 9, 2017 Order scheduling briefing and a hearing on the Motion to Stay Matter (ECF No. 3), and the Court's June United States' Response to Petitioner's Motion to Seal- 1

1 The United States requests that the Court maintain the seal on filings
2 referencing the subject matter and purported conduct of the ongoing parallel criminal
3 and civil investigations or referencing third parties not involved in the instant
4 proceeding. Specifically, Petitioner's Motion to Stay Deposition and Reply, as well as
5 the United States' Response describe the subject of the ongoing investigations. (*See*,
6 *e.g.*, ECF No. 1 at 1-2, Att. A (CID for Oral Testimony of R.J.M.), Att. B; ECF No. 5
7 at 2, 5; ECF No. 6 at 1-2, 6, 10). Further, the United States notes that, in particular,
8 Attachments 7 and 8 are sensitive communications with prosecutors made in
9 connection with the ongoing criminal investigation and should be kept under seal so
10 as to not impair that investigation. (ECF No. 5 Att. 7; *id.* Att. 8). Those
11 communications contain information concerning the subject of ongoing criminal and
12 civil investigations and should be kept under seal to not compromise the investigative
13 process or otherwise hinder the progress of these investigations. Moreover,
14 Petitioner's Motion and Reply similarly purport to discuss the status and/or progress
15 of those investigations. (*See, e.g.*, ECF No. 1 at 9-10; ECF No. 6 at 4-5). Particularly
16 since the status of the civil investigation has not been shared with counsel for
17 Petitioner, it would not be prudent or fair to other individuals or entities potentially
18 impacted by the investigations for such speculation about the status to be made public.

19 The parties' pleadings and attachments also discuss third parties involved in the
20 investigation. (*See, e.g.*, ECF No. 1 at 2, 3, 4, Att. A, Att. B; ECF. No. 5 at 5, 6, Att.
21 1, Att. 2, Att. 3). Discussion of these third parties, if made public at this point, could
22 hinder the ongoing civil and criminal investigative efforts, as well as be unfair to third
23 parties about whom and which decisions regarding potential civil and criminal
24

25
26 22, 2017 Order on the Motion to Stay Matter (ECF No. 7) do not reference the subject
27 of, nor third parties involved in, the ongoing criminal and civil investigations.

28 Therefore, the United States does not request that these documents remain under seal.
United States' Response to Petitioner's Motion to Seal- 2

1 liability have not yet been made. Therefore, these filings should remain under seal at
2 this time.

3 The subject matter of the investigation, third party involvement, and substantive
4 communications in connection with the criminal investigation were also discussed
5 during the Court's June 12, 2017, hearing, and therefore the transcript of those
6 proceedings should be under seal as well. The Court's June 22, 2017, Order also
7 references third parties and substantive communications with criminal prosecutors,
8 though to a lesser degree than the other filings identified above. (*See* ECF No. 8 at 4-
9 6). For these reasons, Petitioner's Motion to Stay Deposition and Reply, with their
10 respective attachments; the United States' Response and its attachments; the transcript
11 of the telephonic hearing; and the Court's June 22, 2017, Order on the Petition to Stay
12 Deposition, should remain under seal at this time. (*See* ECF Nos. 1, 5, 6, 8).

13 If the Court should rule that any of the above-identified filings should not
14 remain under seal in their entirety, the United States requests the opportunity to
15 submit proposed redactions of substantive communications with the criminal
16 investigation team, information regarding third parties, and discussion of the ongoing
17 investigations, so as not to compromise the civil and/or criminal investigations. The
18 pleadings and attachments filed by the parties and the transcript of the hearing would
19 require heavy redaction. In contrast, the Court's June 22, 2017 Order on the Motion
20 to Stay Deposition would require minimal redaction to remove this sensitive
21 information.²

22 //

23
24 ² The sensitive information subject to redaction appears on pages 4-6 of the Court's
25 June 22, 2017 Order. *See* ECF No. 8 at 4 (quoting communications between criminal
26 investigation and R.J.M.); *id.* at 5 (describing substance of communications between
27 criminal investigation and R.J.M.) *id.* at 6 (reference to third party); *id.* at 6 n.3
28 (quoting communications between criminal investigation and R.J.M.).

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

RESPECTFULLY SUBMITTED: June 23, 2017.

s/Tyler H.L. Tornabene
TYLER H.L. TORNABENE
 Assistant United States Attorney
 Attorneys for Defendant United States

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Peter Offenbecher: POffenbecher@skellengerbender.com

s/Tyler H.L. Tornabene
Assistant United States Attorney